

JPA / ECS File No.: 06-045  
AG Contract No.: KR06-0776TRN  
Project: Traffic Intersection  
Reconstruction  
Section: Hayden Road @ Via De  
Ventura, City of Scottsdale  
**TRACS No.: SS587 01C**  
**Budget Source Item No.: n/a**  
Scottsdale No. 2006-130-COS

**INTERGOVERNMENTAL AGREEMENT**

BETWEEN  
THE STATE OF ARIZONA  
AND  
CITY OF SCOTTSDALE

**THIS AGREEMENT** is entered into this date October 20<sup>th</sup>, 2006, pursuant to the Arizona Revised Statutes § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF SCOTTSDALE, acting by and through its MAYOR and CITY COUNCIL (the "City"). The State and the City are collectively referred to as "Parties".

**I. RECITALS**

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
2. The City is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.
3. Congress has authorized appropriations for, but not limited to, the construction of streets and primary, feeder and farm-to-market roads; the replacement of bridges; the elimination of roadside obstacles; and the application of pavement markings.
4. The City has selected such project within the boundary of the City; the survey of the project has been completed; and the plans, estimates and specifications will be prepared and, as required, submitted to the State and Federal Highway Administration (FHWA) for its approval.
5. The interest of the State for this Project is in the acquisition of Federal funds for the use and benefit of the City, and is authorized as the designated agent for the City. Funds expended for the Project are authorized by reason of Federal Law and regulations.
6. The City, in order to obtain Federal funds for the construction of the project, is willing to provide City funds to match Federal funds in the ratio required or as finally fixed and determined by the City and FHWA.

NO. 28507  
Filed with the Secretary of State  
Date Filed: 10/20/06  
*[Signature]*  
Secretary of State  
By: *[Signature]*

7. The work embraced in this Agreement is for the reconstruction of the intersection at Hayden Road @ Via de Ventura. Dual left turn lanes Northbound and Eastbound, right turn lanes on all four legs of the intersection, and bus bays and shelters on the east and south legs of the intersection in the eastbound and southbound direction of travel will be added and administered by the State, hereinafter referred to as the "Project." The City will be responsible for the TI maintenance, provide electrical power for operation of the traffic signal and water connections, landscape maintenance and irrigation water to the Project areas.

**Estimated Construction Cost (TRACS No.: SS587 01C)**

Total Estimated Project	\$1,800,000.00
Federal-aid funds @ 94.3% (capped)	\$1,600,000.00
City funds @ 5.7%	\$ 96,713.00
Estimated City funds at 100%	<u>\$103,287.00</u>
<b>Total Estimated City Funds*</b>	<b>\$200,000.00</b>

\*(Includes construction, construction engineering administration, and incidentals).

**THEREFORE**, in consideration of the mutual covenants expressed herein, it is agreed as follows:

**II. SCOPE OF WORK**

1. The State shall:

a. Submit a program to the Federal Highway Administration (FHWA) containing the above-mentioned Project with the recommendation that it be approved for construction. Should costs exceed the maximum Federal funds available, it is understood and agreed that the City will be responsible for any overage.

b. Approve the Project if such funds are available by FHWA for the Project, and hereby agree to be the designated authorized agent for the City. Upon approval by FHWA, and with the aid and consent of the City and the FHWA, the State will proceed to advertise for, receive and open bids subject to the concurrence of FHWA and the City, plus enter into a contract(s) with a firm(s) to whom the award is made for the construction of the Project. Such Project is to be performed, completed, accepted and paid for in accordance with the requirements of the Project Plans, Special Provisions, and Standard Specifications for Road and Bridge Construction of the Arizona Department of Transportation (ADOT).

c. Upon execution of this Agreement and prior to bid advertising, invoice the City for its share of the Project, currently estimated at \$200,000.00.

d. Should unforeseen conditions or circumstances increase the cost of said work such that a change in the extent or Scope of Work called for in this Agreement become necessary, the State shall not be obligated to incur any expenditures in the project. The State shall provide an opportunity for the City's construction inspection staff to review all construction change order requests and shall not approve any construction change orders without approval from the City's Project Manager.

e. Not be obligated to maintain said Project, should the City fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.

2. The City shall:

a. Upon execution of this Agreement and prior to bid advertising, designate the State as authorized agent for the City and within thirty-days (30) upon receipt of an invoice, deposit funds with the State in an amount equal to the difference between the total cost of the work provided for in this Agreement and the amount of Federal Aid (capped) received. This amount is currently estimated at

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\$200,000.00. The City is entirely responsible for all costs incurred by the State in performing and accomplishing the work as set forth in this Agreement, whether covered by Federal funding or not.

b. Provide to State the design plans, specifications and such other documents and services required for construction bidding and construction of the Project.

c. Certify that all necessary rights-of-way have been or will be acquired prior to advertisement for bid and shall remove from the proposed right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the Project area, and hereby certifies that all obstructions and encroachments have been or will be removed from there prior to the start of construction.

d. Upon completion of right-of-way acquisition, provide the State with a temporary construction easement (TCE) for the Project.

e. Should unforeseen conditions or circumstances increase the cost of said work such that a change in the extent or Scope of Work called for in this Agreement becomes necessary, be obligated to incur and will pay for said increased costs.

f. Continue to be responsible for electrical power costs to operate the traffic signal and ancillary equipment/lighting and irrigation controllers.

g. Upon completion of construction, the City shall be responsible for, at its own costs, the proper and perpetual ongoing maintenance and repairs of the sidewalks, roadway and driveways. Maintenance shall include, but not be limited to, traffic signals, signs, island curbs and markings necessary for the purpose of regulating traffic, and keeping the sidewalk surface and surrounding areas free of debris, undesirable weeds, grasses, trash and litter.

h. At the conclusion of the contractor's maintenance and warranty period referred to in the construction contract as Landscape Establishment Phase, assume responsibility for maintenance of the landscaping and irrigation system in areas associated with said Project in accordance with accepted horticultural practices.

i. Be responsible for providing the water necessary to install and maintain the landscaping associated with said Project.

### **III. MISCELLANEOUS PROVISIONS**

1. This terms, conditions and provisions of this Agreement shall remain in force and effect until completion of said project and related deposits or reimbursement, except any provisions for maintenance shall be perpetual, unless assumed by another competent entity. Further, this Agreement may be canceled at any time prior to the award of the project construction contract, upon thirty days (30) written notice to the other party. It is understood and agreed that, in the event the City terminates this Agreement, the State shall in no way be obligated to maintain said project.

2. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction project. The City, in regard to the City's relationship with the State only, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of the City and that to the extent permitted by law, the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or nonperformance of any provisions of this Agreement by the State, any of its departments, agencies,

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officers and employees the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

3. The cost of construction and construction engineering work covered by this Agreement is to be borne by FHWA and the City, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this Agreement. Therefore, the City agrees to furnish and provide the difference between the total cost of the work provided for in this Agreement and the amount of Federal Aid received.

4. This Agreement shall become effective upon filing with the Secretary of State.

5. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

6. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

7. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

8. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 S. 17<sup>th</sup> Avenue, Mail Drop 616E  
Phoenix, Arizona 85007  
(602) 712-7525  
(602) 712-7424 Fax

City of Scottsdale  
City Engineer  
7447 E. Indian School Rd. Suite. 205  
Scottsdale, Arizona 85251  
(480) 312-2776  
(480) 312-7971

9. This Agreement is subject to all applicable provisions of the Americans with Disability Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

10. Non-Availability of Funds: Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments as a result of termination under this paragraph.

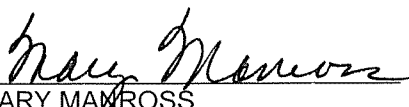
11. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each party's legal counsel and that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

12. The Recitals are by this reference made a part of this Agreement.

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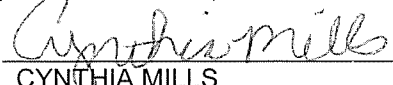
IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

**CITY OF SCOTTSDALE**

By   
MARY MAMROSS  
Mayor

**STATE OF ARIZONA**

Department of Transportation

By   
CYNTHIA MILLS  
Joint Project Administrator

ATTEST:

By   
CAROLYN JAGGER  
City Clerk

G:\Scottsdale reconstruction  
8/2/06 draft ghc

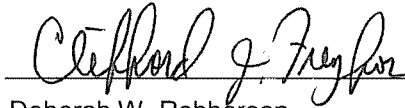
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**ATTORNEY APPROVAL FORM FOR THE CITY OF SCOTTSDALE**

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the CITY OF SCOTTSDALE, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 29<sup>th</sup> day of August, 2006.



Deborah W. Robberson

City Attorney

COPY

RESOLUTION NO. 6984

A RESOLUTION OF THE COUNCIL OF THE CITY OF  
SCOTTSDALE, MARICOPA COUNTY, ARIZONA,  
AUTHORIZING AN INTERGOVERNMENTAL  
AGREEMENT, CONTRACT NO. 2006-130-COS, BETWEEN  
THE CITY OF SCOTTSDALE AND THE STATE OF  
ARIZONA FOR TRAFFIC INTERSECTION  
RECONSTRUCTION ON HAYDEN ROAD AT VIA DE  
VENTURA.

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WHEREAS, the Arizona Revised Statutes section 11-951 et seq. provide that public agencies may enter into intergovernmental agreements for the provision of services, or joint or cooperative action, and

WHEREAS Arizona Revised Statutes section 28-401 authorizes the Arizona State Department of Transportation to enter into intergovernmental agreements for the improvement and maintenance or joint improvement and maintenance along state routes, and

WHEREAS, Arizona Revised Statutes section 48-572 authorizes the City to enter into intergovernmental agreements for landscape maintenance along state routes, and

WHEREAS, Article 1, section 3-1 of the City Charter of the City of Scottsdale authorizes the City to enter into intergovernmental agreements with various public agencies, and


WHEREAS, the City of Scottsdale desires the Arizona State Department of Transportation to construct intersection improvements on Hayden Road at Via De Ventura, and

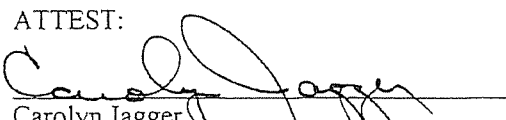
BE IT RESOLVED by the Council of the City of Scottsdale, Maricopa County, Arizona as follows:

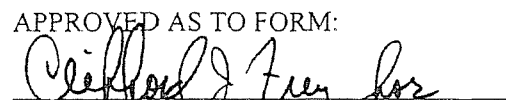
Section 1. The City Council hereby authorizes and directs the Mayor to execute, on behalf of the City of Scottsdale, Intergovernmental Agreement, Contract No. 2006-130-COS, between the City and the State of Arizona.


PASSED AND ADOPTED by the Council of the City of Scottsdale, Maricopa County, Arizona, this 19<sup>th</sup> day of September, 2006.

CITY OF SCOTTSDALE  
An Arizona municipal corporation

BY:   
Mary Manross  
Mayor

ATTEST:  
  
Carolyn Jagger  
City Clerk

APPROVED AS TO FORM:  
  
Deborah W Robberson  
City Attorney

<p>TERRY GODDARD Attorney General</p>	<p> <b>OFFICE OF THE ATTORNEY GENERAL</b> STATE OF ARIZONA</p>	<p>CIVIL DIVISION TRANSPORTATION SECTION Writer's Direct Line: 602.542.8855 Facsimile: 602.542.3646 E-mail: Susan Davis@azag.gov</p>
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**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR06-0776TRN (**JPA 06-045**), an Agreement between public agencies, i.e., The State of Arizona and City of Scottsdale, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED:      October 11, 2006

TERRY GODDARD  
Attorney General



SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section

SED:mjf:982372  
Attachment